IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

CRL.A.No. 1400 of 2007

AGAINST ORDER DATED 22.6.2007 IN O.P.(MIS.) NO.221/2006 of DISTRICT COURT, TRIVANDRUM

.....

APPELLANT/COUNTER PETITIONER:

DR. V.K.RAJAN, S/O. KOCHUKUTTY, AGED 56 YEARS, FORMERLY DIRECTOR OF HEALTH SERVICES, KERALA, (RESIDING AT OF TC 25/405(1) & (2), PANCHAJANYAM GARDENS, SANTHI NAGAR, THIRUVANANTHAPURAM).

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENT/PETITIONER:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, (THROUGH THE DEPUTY SUPERINTENDENT OF POLICE, VACB, SPECIAL CELL, THIRUVANANTHAPURAM).

BY SHRI P.G.THAMPI, DIRECTOR GENERAL OF PUBLIC PROSECUTIONS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/10/2007, ALONG WITH CRL.M.C. NO. 2559 OF 2007 AND CRL.M.C. NO. 2526 OF 2007, THE COURT ON 01/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

Crl.A.1400 of 2007,
Crl.M.C.Nos.2526 & 2559 of 2007

Dated this the 1st day of November, 2007

JUDGMENT

Koshy, J.

In all these cases, main questions to be considered are common. Validity of the Criminal Law (Amendment) Ordinance, 1944 (hereinafter referred to as 'the Ordinance') and jurisdiction of District Judge under the Ordinance after enactment of the Prevention of Corruption Act, 1988 (in short 'P.C. Act') are the main questions to be considered in these cases. In Crl. Appeal No.1400 of 2007 appellant was facing investigation for the case registered against him for the offence punishable under Section 13 (2) read with Section 13 (1) (e) of the P.C. Act alleging that the appellant had amassed wealth disproportionate to his income. The check period is 1.1.1994 to 12.5.2005. While the investigation was continuing, an application was filed by the Investigating Officer before the District Court for attachment of his properties invoking provisions of Section 3 and 5 of the Ordinance. The District Court passed an order attaching certain properties scheduled in the petition. When the case came up for admission, after admitting the appeal, referred the case to Division Bench as some important questions of law

are involved in this case. When petition for attachment was filed under the above Ordinance, preliminary objection was filed to decide the question of maintainability of the petition by the petitioners in Crl.M.C.No.2526 of 2007. That petition was dismissed. After that order, the above Crl. M.C. was filed under Section 482 of the Code of Criminal Procedure. The very same petitioners applied for production of certain documents. Those petitions were dismissed. Hence, they again filed Crl.M.C.No.2559 of 2007. Since criminal appeal involving almost similar points were referred to the Division Bench, these criminal miscellaneous petitions were also referred to the Division Bench.

2. According to the learned single Judge, following questions are to be answered by the Division Bench:

> "i. Whether the District Court has got the power or jurisdiction to pass the impugned order under the provisions of the Prevention of Corruption Act, 1988?
>
> ii. Whether the State of Kerala can be represented by an Investigating Officer to file an Original Petition before the District Court as the State has to be represented either by a Public Prosecutor appointed under Section 24 Cr. P.C. or by a Government Pleader duly appointed?

> iii. The Criminal Law (Amendment) Ordinance, 1944 being a pre-constitutional law, whether the Ordinance has got any validity or can continue to remain valid after the commencement of the Constitution of India?
>
> iv. Whether an Ordinance by the Governor General of India under the provisions of Section 72 of Schedule IX of the Government of India Act, 1935 can be considered as an existing law as contemplated under Article 366 (10) of the Constitution of India and whether such an Ordinance can continue as an existing law as per Article 372 (2) of the Constitution of India?
>
> v. Whether the Criminal Law (Amendment) Ordinance, 1944 has got any validity after the expiry of six months as contemplated under Article 123 of the Constitution of India?"

3. Questions (iii), (iv) and (v) mainly deal with validity of the Ordinance. Hence, we shall answer those questions initially. In view of article 372 of the Constitution, all the law in force immediately before the commencement of the Constitution shall continue in force until altered according to law. Article 366 (10) of the Constitution defines 'existing law' as follows:

> " 'existing law' means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation;"

Article 372 (1) of the Constitution is as follows:

> "372. Continuance in force of existing laws and their adaptation:- (1) Notwithstanding the repeal by the Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

Then, the question is whether the Ordinance was an existing law immediately before the commencement of the Constitution. Part II of the Government of India Act, 1935 envisaged the establishment of the Federation of India. Section 317 of the Government of India Act, 1935 continued the provisions of the Government of India Act, 1915 with certain amendments mentioned in Schedule 9 of 1935 Act until the establishment of the Federation. Section 72 of the 9th Schedule conferred upon the Governor-General powers to issue Ordinances in cases of emergency. It provided:

> "The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature: but the power of making ordinances under this section is subject to the like restrictions as the power of the

> Indian Legislature to make laws: and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature, and may be controlled or superseded by any such Acts."

The British Parliament passed the India and Burma (Emergency Provisions) Act, 1940 on 27th June, 1940. Section 1 (3) of that Act stated:

> "Section seventy-two of the Government of India Act (which as set out in the Ninth Schedule to the Government of India Act, 1935 confers on the Governor General power to make Ordinances in cases of emergency) shall, as respects Ordinances made during the period specified in section 3 of this Act, have effect as if the words 'for the space of not more than six months from its promulgation were omitted: ......' "

Section 3 provided:

> "The period referred to in the preceding section is the period beginning with the date of the passing of this Act and ending with such date as His majesty may by Order in Council declare to be the end of the emergency which was the occasion of the passing of this Act."

On 1st April, 1946 His majesty's order in Council was published in the Gazette of India terminating the period of emergency with effect from 1st April, 1946. Thus period specified under section 3 of the Act is from 27th June, 1940 to 1st April, 1946. The Criminal Law Amendment Ordinance No.38 of 1944 was promulgated on 23rd October, 1944, that is to say in between the specified period.

Therefore, the above Ordinance will continue in force even after the expiry of six months and was an existing law when Constitution of India came into force.

4. Whether Ordinance passed in between 27th June, 1940 and 1st April, 1946 will continue for interim period was considered by a five member bench of the Apex Court in Hansraj Moolji v. The State of Bombay (AIR 1957 SC 497) and held as follows:

> "18. This argument however ignores the fact that whatever Governor-General's Acts were enacted or Ordinances promulgated by him in exercise of his special legislative powers or in exercise of the emergency power conferred upon him by S.72 of the 9th Schedule of the Government of India Act, 1935 were all equated with the Acts of the Federal Legislature or the Indian Legislature as the case may be, assented to by the Governor-General. If there was a limitation to be found in the Acts or the Ordinances themselves in regard to the duration thereof the same was to prevail. But if no time was limited in the enactment itself for its duration it was to continue in force until it was repealed. If by the operation of S.1 (3) of the India and Burma (Emergency Provisions) Act, 1940 the words 'for the space of not more than six months from its promulgation' were omitted from S.72 during the period specified in S. 3 of the Act, viz., June 27, 1940, to April 1, 1946 there was no limitation of the period of duration of the Ordinance in question and the Ordinance having the like force of law as an Act passed by the Indian Legislature without any limitation on its duration was to continue in force until it was repealed. The emergency under which the Governor-General was invested with the power to make

> and promulgate Ordinances for the peace and good government of British India or any part thereof under S.72 was the condition of the exercise of such power by the Governor-General and did not impose any limitation on the duration of the Ordinances thus promulgated. For determining the duration of such Ordinances one had to look to the substantive provisions of S.72 which in terms enacted and laid down the limitation of 'not more than six months from its promulgation' on the life of the Ordinance. If these words had not been omitted by S.1 (3) of the India and Burma (Emergency Provisions) Act, 1940, the Ordinances thus promulgated would have been of a duration of not more than six months from their promulgation."

Thereafter, it was held as follows:

> "19. The effect of the deletion of these words from S.72 leaving the section to be read as above had the necessary effect of equating the Ordinances which were promulgated between June 27, 1940 and April 1, 1946, with Acts passed by the Indian Legislature without any limitation of time as regards their duration. Ordinances thus promulgated were perpetual in duration and continued in force until they were repealed."

The Apex Court also considered the decision of the Federal Court and observations of **Spens, C.J.,** in J.K.Gas Plant Manufacturing Co. (Rampur) Ltd. v. King Emperor (AIR 1947 FC 38 at page 44) and held as follows:

> "21. In our opinion, the above observations of **Spens, CJ.** enunciate the correct position. The Ordinance in question having been promulgated during the period between 27.6.1940 and 1.4.1946, was

> perpetual in duration and continued in force until it was repealed. Our attention has not been drawn to any subsequent Ordinance or Act of the Indian Legislature amending or repealing the said Ordinance with the result that it continued to be force."

Hon'ble Apex Court was considering the validity of the High Denomination Bank Notes (Demonetization) Ordinance, 1946. The decision is equally applicable in this Ordinance also.

5. With regard to the alternative contention raised by the appellant that even if Ordinance will be valid beyond six months it will be valid only till the end of declaring of emergency, same was repelled by the Supreme Court in the above case as follows:

> "27. The alternative argument addressed before us by the learned counsel for the appellant, need not detain us at all, for the simple reason that reading S.72 in the manner suggested would be tantamount to giving a retrospective effect to the section as it originally stood in regard to Ordinances which had been promulgated between 27.6.1940 and 1.4.1946. There is nothing to justify such retrospective operation. As regards such Ordinances the period of their duration had to be determined having regard to the provisions of S.72 as they stood with the omission of the words 'for the space of not more than six months from its promulgation' therefrom during the period specified in S.3 of the India and Burma (Emergency Provisions) Act, 1940 and the Ordinance in question was therefore not limited to the space of not more than six months from the date of its promulgation but was perpetual in its duration with the result that it continues in operation until it is repealed. There is

> no warrant for reading the provisions of S.72 with the omitted words restored to their original position after 1.4.1946 while determining the duration of the Ordinances which had been promulgated between 27.6.1940 and 1.4.1946."

Every statute for which no time is limited is called a perpetual Act and its duration is prima facie perpetual. It continues in force until it is repealed or altered. (Vide **Craies on Statute Law**, Ed.5, p. 374; **Halsbury's Laws of England**, (Vol.XXXI, p. 511 para 664). If an Act contains a proviso that it is to continue in force only for a certain specified time, it is called a Temporary Act. This result would follow not only from the terms of the Act itself but also from the fact that it was intended only as a temporary measure. This ratio has also been applied to emergency measures which continue during the subsistence of the emergency but lapse with the cessation thereof. But, in view of India and Burma (Emergency Provisions) Act, 1940, the Ordinance under challenge is not a temporary one as it was passed before India and Burma (Termination of Emergency) Order, 1946 in view of the principles enunciated in the authoritative decision of the Hon'ble Apex Court in Hansraj Moolji's case (supra).

6. The contention that the Ordinance is not applicable after independence is also untenable. The Indian

Independence Act came into force on the 15th of August 1947, and sub-section (2) of section 8 of this Act lays down as follows:

> "Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under sub-section (1) of this section, each of the new Dominion and all provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935; and the provisions of that Act, and of the Orders in Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions, additions, adaptations and modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly."

Sub-section (3) of section 18 is most important for our present purpose, and it lays down:

> "Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf."

These statutory provisions are very clear to the effect that law existing at the time of independence was

continuing even after independence, unless they are repealed or amended. Since Ordinance under challenge was not rescinded, it continued after independence.

7. Considering the provisions in the Prevention of Corruption Act there is no scope for any controversy as we are of the view that as the Ordinance is adopted and incorporated in the P.C. Act itself. Section 5 (6) of the P.C. Act provides as follows:

> "5. Procedure and powers of Special Judge -- xx xx xx xx
>
> (6) A Special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944)."

Section 29 reads as follows:

> "29. Amendment of the Ordinance 38 of 1944:- In the Criminal Law Amendment Ordinance, 1944, --
>
> (a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words 'State Government', wherever they occur, the words 'State Government or, as the case may be, the Central Government' shall be substituted.
>
> (b) in section 10, clause (a), for the words, 'three months', the words 'one year' shall be substituted;

> (c) in the Schedule, --
>
> (i) paragraph 1 shall be omitted;
>
> (ii) in paragraphs 2 and 4, --
>
> (a) after the words 'a local authority', the words and figures 'or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government company' shall be inserted;
>
> (b) after the words 'or authority', the words 'or corporation or body or Government company or society' shall be inserted;
>
> (iii) for paragraph 4-A, the following paragraph shall be substituted, namely, --
>
> "4-A. An offence punishable under the Prevention of Corruption Act, 1988". "

The above section shows that Ordinance was amended by the provisions of P.C. Act to the extent mentioned therein. Therefore, in view of the clear provisions in the P.C. Act it is clear that the provisions of the Ordinance are adopted in the P.C. Act and are still applicable. Hence,

we are of the view that the Ordinance is valid and still applicable and any provisions of the Ordinance as amended by section 5 (6) and section 29 of the P.C. Act are valid as specifically accepted and adopted by the provisions of the P.C. Act. A plethora of decisions of Supreme Court and High Court were cited before us to show that the Ordinance is still valid. (See: M.M. Sales and Exports (India) (Pvt.) Ltd. and others v. The State of UP and others (AIR 1974 Allahabad 263); State of Bihar v. Santo Kumar Mith and others (AIR 1952 Patna 148) etc.) Therefore, Ordinance is accepted and followed throughout India after Independence till now and hence we answer question Nos.(iii), (iv) and (v) affirmatively in favour of the prosecution and against the appellant and petitioner.

8. Now, we will consider question No.(i) regarding jurisdiction of the District Court to consider the application for attachment after establishment of Special Courts(Question No.(i)). It was argued that after the enactment of P.C. Act only Special Judge can consider the application and jurisdiction of other courts are ousted. There is no dispute regarding the proposition that Special Court constituted under the P.C. Act is conferred with special jurisdiction to deal with the cases under the Act. On a reading of sections 5 and 6 of the P.C. Act, it is

crystal clear that Special Judge constituted under the Act is exercising all powers conferred on court of original jurisdiction except the powers specifically taken away and it is under the direct supervision of the High Court and not under the Sessions Court. Special Court can take cognizance of the case or can exercise all powers of a Magistrate under the Code of Criminal Procedure and after investigation of the case, it can try the case as a Sessions Judge and will be deemed to be Sessions Judge in view of special conferment of jurisdiction by the Act, Special Judge need not fall within the category of 'Magistrate' or 'Sessions Judge' specified in Cr. P.C. But, it can exercise all powers of a Magistrate and Sessions Judge except those powers specifically excluded and it is not subordinate to Sessions Court, but, only to High Court. It is further clear from section 8 of the Criminal Law Amendment Act, 1952 (in short 'Amendment Act, 1952) which is reproduced below:

> "8. (1) A Special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates.
>
> (2) A Special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly

> concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof; and any pardon so tendered shall, for the purposes of Sections 339 and 339-A of the Code of Criminal Procedure, 1898, be deemed to have been tendered under section 338 of that Code.
>
> (3) Save as provided in sub-section (1) of sub-section (2), the provisions of the Code of Criminal Procedure, 1898, shall, so far as they are not consistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the Special Judges shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor.
>
> (3-A) In particular, and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of the Code of Criminal Procedure, 1898 shall, so far as may be, apply to the proceedings before a Special Judge, and for the purposes of the said provisions, a Special Judge shall be deemed to be a Magistrate.
>
> (4) A Special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted."

9. The Amendment Act was enacted to amend the Indian Penal Code and the Code of Criminal Procedure, 1898 and to provide for a more speedy trial of certain offences.

Section 6 prescribes that State Government has to appoint Special Judge by notification for such area or areas as may be specified in the notification and a person shall not be qualified for appointment as Special Judge unless he is, or has been, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898. Section 7 confers exclusive jurisdiction on the Special Judge appointed under section 6 to try the cases set out in section 6 (1) (a) and 6 (1) (b). Sub-section (2) of section 7 provides that 'every offence specified in sub-section (1) of section 6 shall be tried by the Special Judge for the area within which it was committed, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government.' Sub-section (3) enlarges the jurisdiction of the Special Judge not only to try offences set out in Section 6 (1) (a) and (b) but also to try offences other than those mentioned therein with which the accused may, under the Code of Criminal Procedure, be charged at the same trial. The powers of Special Judge as stated above was considered by the Supreme Court in State of Tamil Nadu v. V.Krishnaswami Naidu and another ((1979) 4 SCC 5). Powers of the Special Judge is made clear by the Constitution Bench decision of the

Supreme Court in A.R.Antulay v. Ramdas Sriniwas Nayak and another ((1984) 2 SCC 500) as follows:

> "27. It is, however, necessary to decide with precision and accuracy the position of a Special Judge and the court over which he presides styled as the Court of Special Judge because unending confusions have arisen by either assimilating him with a Magistrate or with a Sessions Court. The Prevention of Corruption Act, 1947 was enacted for more effective prevention of bribery and corruption. Years rolled by and experience gathered showed that unless a special forum for the trial of such offences as enumerated in the 1947 Act is created, the object underlying th 1947 Act would remain a distant dream. This led to the enactment of the Criminal Law Amendment Act, 1952. The Statement of Objects and Reasons accompanying the Bill refers to the recommendations of the Committee chaired by Dr. Bakshi Tek Chand appointed to review the working of the Special Police Establishment and to make recommendations for improvement of laws relating to bribery and corruption. To take the cases of corruption out of the maze of cases handled by Magistrates, it was decided to set up special courts. Section 6 conferred power on the State Government to appoint as many Special Judges as may be necessary with power to try the offences set out in clauses (a) and (b). Now if at this stage a reference is made to section 6 of the Code of Criminal Procedure which provides for constitution of criminal courts, it would become clear that a new court with a new designation was being set up and that it has to be under the administrative and judicial superintendence of the High Court. As already pointed out, there were four types of criminal courts functioning under the High Court. To this list was added the Court of a Special Judge. Now when a new court which is indisputably a criminal court because it was not even

whispered that the Court of Special Judge is not a criminal court, is set up, to make it effective and functionally oriented, it becomes necessary to prescribe its powers, procedure, status and all ancillary provisions. While setting up a Court of a Special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification prescribed was that the person to be appointed as Special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge. These three dignitaries are above the level of a Magistrate. After prescribing the qualification, the Legislature proceeded to confer power upon a Special Judge to take cognizance of offences for the trial of which a special court with exclusive jurisdiction was being set up. If a Special Judge has to take cognizance of offences, ipso facto the procedure for trial of such offences has to be prescribed. Now the Code prescribes different procedures for trial of cases by different courts. Procedure for trial of a case before a Court of Session is set out in Chapter XVIII; trial of warrant cases by Magistrates is set out in Chapter XIX and the provisions therein included catered to both the types of cases coming before the Magistrate, namely, upon police report or otherwise than on a police report. Chapter XX prescribes the procedure for trial of summons cases by Magistrates and Chapter XXI prescribes the procedure for summary trial. Now that a new criminal court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of courts under section 6 Cr. P.C. by bringing it on level more or less comparable to the Court of Session, but in order to avoid any confusion arising out of comparison by level, it was made explicit in section 8 (1) itself that it is not a Court of Session because it can take cognizance of offences without commitment as contemplated by section 193

Cr. P.C. Undoubtedly, in section 8 (3) it was clearly laid down that subject to the provisions of sub-sections (1) and (2) of section 8, the Court of Special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. In contra-distinction to the Sessions Court this new court was to be a court of original jurisdiction. The Legislature then proceeded to specify which out of the various procedures set out in the Code, this new court shall follow for trial of offences before it. Section 8 (1) specifically says that a Special Judge in trial of offences before him shall follow the procedure prescribed in the Code of Criminal Procedure for trial of warrant cases by Magistrates. The provisions for trial of warrant cases by the magistrate are to be found in Chapter XXI of 1898 Code. A glance through the provisions will show that the provisions therein included catered to both the situations namely, trial of a case initiated upon police report (section 251-A) and trial of cases instituted otherwise than on police report (section 252 to 257). If a Special Judge is enjoined with a duty to try cases according to the procedure prescribed in foregoing provisions he will have to first decide whether the case was instituted upon a police report or otherwise than on police report and follow the procedure in the relevant group of sections. Each of the sections 251-A to 257 of 1898 Code which are in pari materia with sections 238 to 250 of 1973 Code refers to what the Magistrate should do. Does the Special Judge therefore become a Magistrate? This is the fallacy of the whole approach. In fact, in order to give full effect to section 8 (1), the only thing to do is to tread Special Judge in sections 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by incorporation. Similarly, where the question of taking cognizance arises, it is futile to go in search of the fact whether for purposes of section 190

which conferred power on the Magistrate to take cognizance of the offence, Special Judge is a Magistrate? What is to be done is that one has to read the expression 'Special Judge' in place of Magistrate, and the whole thing becomes crystal clear. The Legislature wherever it found the grey area clarified it by making specific provision such as the one in sub-section (2) of section 8 and to leave no one in doubt further provided in sub-section (3) that all the provisions of the Code of Criminal Procedure shall so far as they are not inconsistent with the Act apply to the proceedings before a Special Judge. At the time when the 1952 Act was enacted what was in operation was the Code of Criminal Procedure, 1898. It did not envisage any Court of a Special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new criminal court which was being set up. Therefore, it conferred power (taking cognizance of offence), prescribed procedure (trial of warrant cases by a Magistrate), indicated authority to tender pardon (section 338) and then after declaring its status as comparable to a Court of Session proceeded to prescribe that all provisions of the Code of Criminal Procedure will apply in so far as they are not inconsistent with the provisions of the 1952 Act. The net outcome of this position is that a new court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific questions brought before it as court of original criminal jurisdiction, it had to refer to the Code of Criminal Procedure undaunted by any designation claptrap. When taking cognizance, a Court of Special Judge enjoyed the powers under section 190. When trying cases, it is obligatory to followed the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Session. The entire argument inviting us to specifically

> decide whether a Court of a Special Judge for a certain purpose is a Court of Magistrate or a Court of Session revolves round a mistaken belief that a Special Judge has to be one or the other, and must fit in in the slot of a Magistrate or a Court of Session. Such an approach would strangulate the functioning of the court and must be eschewed. Shorn of all embellishment, the Court of a Special Judge is a court of original criminal jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hidebound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied."

In view of the authoritative pronouncement of the Apex Court status of a Special Judge, we are not referring to various High Court decisions cited before us for this purpose. But, in none of the decisions cited it is stated that Special Judge is deemed to be District Judge or vested with power of a District Judge.

10. Section 5 (3) of the P.C. Act is as follows:

> "(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session and the person conducting a

> prosecution before a Special Judge shall be deemed to be a public prosecutor."

On a plain reading of sub-sections (3) and (6) of section 5 of the P.C. Act, it is clear that under the former the Special Judge has to be treated as a Sessions Judge and it further specifies that he shall exercise all the powers of a Sessions Judge provided under the Cr. P.C. with restrictions imposed under this Act. The latter authorises him to exercise the power of a District Judge only for attachment of property during trial. Though sub-section (6) entitles the Special Judge to exercise some powers of the District Judge, while trying an offence, but, it does not say that the Special Judge shall be deemed to be a District Judge as contemplated under the Ordinance. Thus, the language used in sub-section (3) leaves no manner of doubt that to all intents and purposes, the Special Judge, apart from having the jurisdiction of the original criminal court, that is, Magistrate's court, is also deemed to be Sessions Judge and the provisions of the Cr. P.C. shall be applicable to the proceeding before him so far they are not inconsistent with the Act. Power of attachment under the Ordinance is specifically given to District Judge only. Sections 4 and 5 of the Ordinance read as follows:

"4. Ad interim attachment:- (1) Upon receipt of an application under section 3 the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exists no prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available, for attachment of such other property of the said person of equivalent value as the District Judge may think fit;

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order examine the person making the affidavits accompanying the application.

(2) At the same time as he passes an order under sub-section (1) the District Judge shall issue to the person whose money or other property is being attached a notice accompanied by copies of the order, the application and affidavits and of the evidence, if any recorded calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue notices, accompanied by copies of the document accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as that specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any

portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion there\of may notwithstanding that no notice has been served upon him under this section make an objection as aforesaid to the District Judge at anytime before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 5.

5. Investigation of objections to attachment:- (1) If no cause is shown and no objections are made under section 4 on or before the specified date, the District Judge shall forthwith pass an order making the ad interim order of attachment absolute.

(2) If cause is shown or any objections are made as aforesaid, the District Judge shall proceed to investigate the same, and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Ordinance, follow the procedure and exercise all the powers of the Court in hearing a suit under the Code of Civil Procedure, 1908, and any person making an objection under section 4 shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached..

(3) After investigation under sub-section (2) the District Judge shall pass an order either making the ad interim order or attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:

Provided that the District Judge shall not,

(a) release from attachment any interest which he is satisfied that the person believed to have committed a scheduled offence has in the property,

> unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence; or
>
> (b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the said offence procured any money or other property."

A plain reading of the provisions of the Ordinance would show that only District Judge is vested with power for attachment and not the criminal court which is taking cognizance or trying the case. Power of attachment to the criminal court is as provided only under section 83 of Cr. P.C. with respect to property of person absconding. But, in view of section 5 (6) of the P.C. Act, Special Judge, though a criminal court, is specifically empowered to the powers of a District Judge under the Ordinance to attach property as provided under the Ordinance, while trying an offence.

11. Learned counsel for the appellant relied on the decision of the single Bench of Andhra Pradesh High Court in Rongala Mohan Rao v. State (2000 (1) ALT (Crl.) 447 (AP). In that case, petition was filed before the Special Judge for attachment of the scheduled property of

the petitioner and relatives. Order of attachment was passed under the Ordinance. He filed revision petition. It was dismissed by a single Judge of the Andhra Pradesh High Court with the following observations:

> "6. I do not agree with the above submissions. Admittedly, the Special Court for ACB cases is constituted with the jurisdiction specified in the annexure to the enactment. The properties sought to be attached are within the jurisdiction of the Special Judge for ACB cases, Visakhapatnam. Certainly the Special Judge has power to order attachment even in cases which are at the investigation stage. If literal meaning is given to the term 'District Judge' used in section 3 of the Criminal Law Amendment Ordinance, 1944, it would result in dichotomy of the jurisdiction and such interpretation is not called for. The Special Judge is of the rank of the District Judge. If he has power to order attachment during trial, certainly he has power to pass any order axillary to his powers even when the case is at the investigation stage. It is the ACB Department which is dealing with the case and doing investigation and, therefore, only the Special Judge has power to pass attachment of the property even at the stage of investigation as is done in this case. Interpretation given by the learned Special Judge with regard to the harmonious construction is correct. Hence, there is no ground to interfere with the impugned order and the Revision is accordingly dismissed."

There, the only reason given by the learned single Judge was that if the power is vested with the District Judge for attachment, it will create dichotomy of jurisdiction. Hence, the Special Judge who is vested with jurisdiction

for dealing with matters during investigation stage can exercise the power under the Ordinance before trial also even though the literal meaning gives a different interpretation. Learned counsel for the appellant also submitted that by virtue of power under section 5 (6) Special Judge is entrusted with power of the District Judge for attachment under the Ordinance even at the investigation stage before trial started. It is also argued that the word 'trial' is not defined. Hence, from the registration of the case till pronouncement of judgment, the case is under trial in a broader view.

12. In Rongala Mohan Rao's case (supra), learned single Judge of the Andhra Pradesh High Court did not refer to any earlier decisions. The only reason for holding that Special Judge is vested with power of attachment under the Ordinance before trial at the investigation stage, it will result in dichotomy of the jurisdiction. But, even before P.C. Act was framed and before Special Courts were constituted, trial of offences was conducted by criminal courts. District Court was not concerned with pre-trial or trial proceedings of the crime. Pre-trial proceedings were done by the Magistrate's Court and after committal, trial was conducted by the Sessions Court. But, power of attachment under the Ordinance which is not contemplated

under the Cr. P.C. was given to the District Court, a civil court. The purposes of the Ordinance was to give power of attachment to civil court, a court other than criminal court which is dealing with the crime even though it is connected with a criminal case. Therefore, it cannot be contended that after establishment of Special Courts, a new dichotomy of jurisdiction is created or a different meaning other than the literal meaning to be given to section 5 (6) of the P.C.Act.

13. Section 3 (1) and (2) of the Ordinance read as follows:

> "3. Application for attachment of property:- (1) Where the State Government or as the case may be, the Central Government has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the State Government or as the case may be, the Central Government may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for attachment under this Ordinance of the money or other property which the State Government as the case may be, the Central Government believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached of other property of the said person or value as early as may be equivalent to that of the aforesaid money or other property.
>
> (2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure,

> 1908, shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government."

Section 4 deals with power of interim attachment by the District Court and section 5 deals with investigation of objections to attachment. Section 7 gives power to attach properties of mala fide transferees. Section 7 provides that order of attachment shall be done as per the provisions of the Code of Civil Procedure. Section 12 gives power to the criminal court to evaluate the property. Section 13 deals with disposal of attached property upon termination of criminal proceedings. Section 13 reads as follows:

> "13. Disposal of attached property upon termination of criminal proceedings:- (1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the State Government or as the case may be, the Central Government shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the appellate or revisional Courts thereon.
>
> (2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the criminal Courts is one of acquittal, the District Judge shall forthwith withdraw any

orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the Criminal Courts is one of conviction the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment there shall be forfeited to Government such amount or value as is found in the final judgment or order of the Criminal Courts in pursuance of section 12 to have been procured by the convicted person by means of the offence together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached and where the property of any transferee of the convicted person has been attached under section 6, the District Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment f the transferee's property as determined by the District Judge shall be forfeited to Government from the attached property of the transferee or out of the security given in lieu of such attachment; and the District Judge may order without prejudice to any other mode of recovery that any fine referred to in sub-section (3) or any portion thereof not recovered under that

> sub-section shall be recovered from the attached property of the transferee or out of security given in lieu of such attachment.
>
> (5) If any property remains under attachment in respect of any scheduled offence or any security given in lieu of such attachment remains with the District Judge after his orders under sub-sections (3) and (4) have been carried into effect the order of attachment in respect of such property remaining shall be forthwith withdrawn or las the case may be the remainder of the security returned, under the orders of the District Judge.
>
> (6) Every sum ordered to be forfeited under this section in connection with any scheduled offence other than one specified in item 1 of the Schedule to this Ordinance shall, after deduction of the costs of attachment as determined by the District Judge, be credited to the Government (being a Government referred to in the said schedule) or local authority to which the offence has caused loss or where there is more than one such Govt. or local authority, the sum shall, after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each."

This shows that District Court while attaching the property under the Ordinance has nothing to do with the merits of criminal trial. But, he shall dispose of the attached property after the decision of the criminal court depending upon the decision of the criminal court. Therefore, Legislature intended dichotomy of jurisdiction with a purpose. District Judge is bound to follow the provisions of CPC while attaching the property and

disposing of the attached property after judgment of the criminal court which follows Cr. P.C.

14. The power of attachment is a special power conferred upon the District Judge under the Ordinance. District Court is vested with certain powers for attachment of the property with regard to a matter connected with a matter pending in criminal court having special jurisdiction. Therefore, the question whether District Court acts as a civil court or criminal court is of not much consequence. The District Court is vested with special powers and procedures in dealing with attachment. Right of appeal is also provided separately. Constitution Bench of the Apex Court in The State of West Bengal v. S.K.Ghosh (AIR 1963 SC 255) held as follows:

> "11. Further, what S.13 (3) of the 1944 Ordinance which provides for forfeiture requires is that there should be in the final judgment of the criminal court a finding as to the amount of money or value of property in pursuance of S.12. As soon as that finding is there, the District Judge would know the amount he is to forfeit, and the purpose of the finding is that if the District Judge is asked to make a forfeiture under S.13 (3) he should know exactly the amount which he is required to forfeit. So long therefore as the criminal court trying an offender has given a finding as to the amount of money or value of other property procured by means of the offence in the judgment that in our opinion is sufficient compliance with S.12 (1) of the 1944 Ordinance and the requirement therein that it

> should be on the representation of the prosecution is a mere formality. Obviously, even a determination under S.10 of the 1943 Ordinance as amended in 1945 of the amount procured by the offence must be at the instance of the prosecution, for it is the prosecution which will provide the material for that determination which in turn will be the basis on which the fine will be determined by the court under S. 10."

Hon'ble Apex Court again held as follows:

> "We are therefore of opinion that forfeiture provided in S.13 (3) in case of offences which involve the embezzlement etc. of Government money or property is really a speedier method of realising government money or property as compared to a suit which it is not disputed the Government could bring for realising the money or property and is not punishment or penalty within the meaning of Art. 20 (1). Such a suit could ordinarily be brought without in any way affecting the right to realise the fine that may have been imposed by a criminal court in connection with the offence."

It was further observed as follows:

> "Therefore, the fine of Rs.45 lacs imposed in this case has nothing to do with the amount to be forfeited under S.13 (3) and simply because that fine was imposed after taking into account the amount embezzled would make no difference so far as S.13 (3) is concerned. That section clearly contemplates that the District Judge will first forfeit the attached properties upto the amount of money determined under S.12 and hereafter if any further properties are left the fine imposed by the criminal court may be realised from those properties. The fact that the fine imposed by the criminal court may have taken into account under S.10 of the 1943 Ordinance the amount of money procured by means of the offence makes no

> differences to the interpretation of S.13(3). Therefore, the District Judge was right in holding that out of the properties attached he had first to forfeit properties up to the value of Rs.30 lacs under S.13 (3) and thereafter if any properties are left, it will be open to Government to realise the fine of Rs.45 lacs from such properties."

All those observations point out that power of attachment prescribed under the Ordinance in the District Judge is only to protect the Government money. Instead of Government being compelled to file a suit, by proceeding under the Ordinance, Government can realise its money and that power has nothing to do with the merits of investigation or trial of offence which is vested in the sole jurisdiction of the Special Court.

15. It was argued that under section 5 (6) of P.C. Act gives jurisdiction to the Special Court all the powers of a District Court 'while trying' an offence. The question is what is 'trial'. In the normal course, trial is started after charge sheet is filed or cognizance is taken or case is committed and continues till judgment is pronounced. It is true that the word 'trial' is capable of wide meaning. But, trial in a criminal case is different from trial in a proceeding before a tribunal or civil court or quasi-judicial authority. Meaning has to be arrived on the context where words are used. The words 'inquiry' and

'investigation' are defined under section 2 (g) and 2 (h) in the Cr. P.C. as follows:

> " (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;
>
> (h) 'investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;"

Now, we will consider the meaning of 'trial' in the context of P.C. Act. Section 5 (1) provides that Special Judge can take cognizance of the case without committal of the case to him for trial and Special Judge should and shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for trial of warrant cases by the Magistrate. It is further provided under section 5 (3) that the provisions of Cr. P.C. so far as they are not inconsistent with the special provisions in P.C. Act will apply to the proceedings before a Special Judge and court of Special Judge should be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor under section 5 (1) and (2).

16. Procedure for trial by a Court of Sessions for trial is mentioned under Chapter XVIII of Cr. P.C. Procedure for trial of warrant cases by Magistrates is

prescribed in Chapter XIX. Section 238 itself states that at the commencement of the 'trial', the Magistrate shall satisfy himself that he has complied with the provisions of section 207 and section 207 of Cr. P.C. provides that the Magistrate shall supply police report and also 161 statement to the accused free of cost. So, trial can start after supply of police report. In cases not coming under police report, trial starts on appearance of the person under chapter XIXB. Hence, a reading of the provisions of Cr. P.C. together with P.C. Act makes it clear that trial before the Special Judge starts only after Special Judge takes cognizance of the case or at least when charge sheet is filed and accused appeared before it. When the case is under investigation, one cannot say that the case is under trial before a court.

17. In **Tomlins Law Dictionary** 'trial' is defined as follows:

> "The examination of a cause 'civil or criminal' before a judge who has jurisdiction over it, according to the laws of the land."

In re: Kate Appadu and others (1916 Crl.L.J.81) it is held that "when charge has been read and explained to the accused and he pleads to it, the inquiry becomes a trial." It is true that even before charges are framed, when accused is allowed to be proceeded and requested to be

present before the court, trial may start. The Apex Court in State of Bihar v. Ram Naresh Pandey and another (AIR 1957 SC 389 at page 394), while considering section 494 of Cr. P.C. (section 321 of present Cr. P.C.) observed as follows:

> "In quite a number of sections in the code the words 'trial' or 'tried' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the code, they should necessarily be limited in their connotation and significance."

In section 321, specific provision is made for enabling the Public Prosecutor to withdraw the case even before charge has been framed. Trial can be conducted by a civil court or tribunal or before quasi-judicial authority when parties are summoned before the stage and when respondent is asked to appear to be present in court. Unlike 'trial' in election petition or 'trial' before a tribunal under special Acts, the word 'trial' has got an accepted meaning in criminal jurisprudence and it starts only while judicial proceeding starts and not before that. In this connection, we refer to the observations of the Supreme Court in Thampanoor Ravi v. Charupara Ravi and others ((1999) 8 SCC 74) at paragraph 22:

> "22. In ascertaining the meaning of an expression used in a statute, certain norms are adopted. If the legislature has used an expression which has acquired a technical meaning and such expression is used ordinarily in the context of a particular branch of law, it must be assumed that because of its constant use the legislature must be deemed to have used such expression in a particular sense as is understood when used in a similar context. If an expression has acquired a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Such an expression must be given its legal sense and no other. In this context, we may refer to the weighty observation in the decision of this Court in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. (AIR 1958 SC 560) that a term of well-recognised import in the general law should be accepted as confining the meaning in interpreting the Constitution. If the expression 'undischarged insolvent' has acquired a special meaning under the law of insolvency, we must understand that that is the meaning that is sought to be attributed to the expression used in Article 191 (1) (c) of the Constitution."

In criminal law, the trial starts only when court takes cognizance of the case and ends when judgment is pronounced. During the investigation stage of the case, before police files final report, it cannot be stated that criminal court is trying the offence. Hence, considering the provisions of the P.C. Act and Cr. P.C. we are of the opinion that enquiry and investigation before the accused is asked to be present in court will not come within the meaning of the words 'while trying the offence'.

Therefore, Special court can exercise the jurisdiction of the District Court under the Ordinance only after starting of trial under section 5 (6) of the P.C. Act and the words used are 'while trying the offence.' Legislature has used the above words with a special purpose. If the interpretation suggested by the appellant is accepted, we have to omit the words 'while trying' from section 5 (6). Court cannot add or amend or delete words by a construction making up a supposed deficiency as held by the Privy Council in Crawford v. Spooner (1846-50 (IV) Moore's Indian Appeal Cases 179). It will amount to re-frame the legislation, but, Court has no power to legislate as held by the Apex Court in State of Kerala v. Mathai Verghese ((1986) 4 SCC 746 at page 749). A construction which will make meaningless any part of the language of a statute, is to be rejected. Every word in a Statute is to be given a meaning. We cannot read section 5 (6) after omitting the words 'while trying the offence'. (See: **Maxwell on Interpretation of Statutes**, 12th Edition, page 36.)

18. It was argued that the words 'while trying the offence' under section 5 (6) of P.C. Act should read as after registration of the crime under the P.C. Act as entire adjudication starts with filing of FIR, giving bail,

magisterial proceedings during enquiry and investigation and taking cognizance or trial of offence and trial under the P.C. Act and vested with the Special Court and considering the object and purpose of enacting the P.C. Act 'while trying the offence' should be given a liberal meaning so as to include the stage before court has taken cognizance of the case considering the purpose of the Act. External aids of interpretation need be looked into only when words used are ambiguous or make the Statute unworkable.

19. When the words of a Statute are clear, plain and unambiguous and capable of one meaning only, the courts are bound to give effect to that meaning irrespective of consequences as held by the Apex Court in Nelson Motis v. Union of India (AIR 1992 SC 1981). The rule stated by **Tindal, C.J.** In Sussex Peerage Case (1844) 11 C1 & F85, p.143) is in the following form: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver." As held by the Apex Court in Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests (AIR 1990 SC 1747, p.1752) and Harbhajan Singh v. Press Council of India (AIR

2002 SC 1351, p.1354), the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. (See: **Principles of Statutory Interpretation** by **Justice G.P. Singh** (Ninth Edition, pages 45 to 49.) Literal or strict interpretation is accepted by the Apex Court in Promoters & Builders Association of Pune v. Pune Municipal Corporation and others ((2007) 6 SCC 143). Hon'ble Apex Court in the above decision observed as follows:

> "The language of the section is very clear and it empowers the State Government to sanction the proposal of the Municipal Corporation regarding modification of the Development Control Rules 'with or without any changes as it may deem fit'. These words are important and cannot be ignored. They have to be given their natural meaning. In Union of India v. Hansoli Devi ((2002) 7 SCC 273) it has been held that it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the court to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and the policy of the Act. In Nathi Devi v. Radha Devi Gupta ((2005) 2 SCC 271) it was emphasised that it is well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part of a statute for a purpose and the

> legislative intention is that every part of the statute should have effect. In Ganga Prasad Verma (Dr.) v. State of Bihar (1995 Supp (1) SCC 192) it has been held that where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature." (para 11)

Here, section 5 (6) of the P.C. Act is clear and Special Judge will get power of attachment under the Ordinance only 'while trying an offence' and not during investigation stage. The power to be exercised and objects to be achieved under the Ordinance and P.C. Act are different and for the purposes of convenience power of the District Court is given to the Special Court only during trial of an offence.

20. Special court is not trying an offence during investigation or enquiry stage. This is further clear in section 29 of P.C. Act. Wherever change is required in the Ordinance, they are specified in the section. It is not stated in section 29 of the P.C. Act that the words 'District Court' wherever appears in the Ordinance shall be substituted by 'Special Court'. In any event, dichotomy of jurisdiction cannot be avoided as Special Court ceases its jurisdiction after pronouncement of the judgment. The attached property has to be disposed of after the judgment of the Special Court by District

Court on the basis of the judgment of the Special Court. The purpose behind the Ordinance is only to protect money embezzled from the Government and recovery of the same so that Government need not file a separate suit for realisation of the money lost. The District Court is not trying the offence, but, only has power to attach the property and then dispose of the property after judgment of the Special Judge as provided in the Ordinance. When P.C. Act came into force, Legislature thought that after trial started, since the entire papers are with the Special Court, powers of the District Court in attaching the property can be exercised by the Special Judge and special powers are given to the Special Judge for attachment by sub-section (6) of section 5. That shows that the Legislature, after due deliberation, empowered the Special Judge to exercise the power of District Judge for attachment of the property 'while trying the offence' only and not at pre-trial or post-trial stage. Before starting of the trial, the application should be submitted to the District Judge for attachment within the local limits of whose jurisdiction the person ordinarily resides or carried on business. It is clear from the section that it is not necessary that the property to be attached should be within the jurisdiction of the District Judge who passed the order

of attachment. The place where the offence is committed or where the properties are situated is not the concern of the District Judge to confer with jurisdiction. The District Judge while exercising powers under the Ordinance has all the powers of the Court in hearing a suit under the Code of Civil Procedure (See: Section 5 (2) of the Ordinance) except what is excluded. So, it cannot be stated that since the entire matter connected with investigation and trial of corruption case are entrusted with Special Courts, power of attachment under the Ordinance also vests only with the Special Judge at the pre-trial stage in view of section 5 (6) of P.C. Act. Therefore, it is clear that the power of attachment under the Ordinance is given to the Special Judge under section 5 (6) of the Act only 'while trying' the case and not during pre-trial stage or investigation stage or after judgment.

21. It was pointed out by the counsel for the appellant that in the commentary on Prevention of Corruption Act, 1988 written by **R.B. Sethi**, 8th Edition at page 243, it is stated as follows:

> "17.Proceedings:- The word 'proceedings' in section 5 is not restricted only proceedings after taking cognizance of the offences but it also includes proceedings before taking cognizance of the offences."

But, the words used in section 5 (6)is 'Special Judge while

trying' and not 'Special Judge while proceeding'. In the book titled as **'A study of Anti-corruption Laws in India'** by **R.C.Goel and Ramakrishna**, 1998 Edition, p. 459, it is stated as follows:

> "Sub-section (6) appears to lay down that the Special Judge while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance, 1944. That power relates to interim attachment of property acquired by commission of offence contemplated by the provisions of the P.C. Act."

The above commentary also shows that while trying the offence, Special Court can exercise powers under the Ordinance as a District Judge. It is of no help to the appellant as trial was not started. Shri P.V. Ramakrishna in **'A treatise on Anti Corruption Laws in India'**, it was noted as follows while considering the scope of section 5 (6):

> "This is a new a new provision. Under this clause the Special Judge, while trying an offence punishable under this Act, is empowered to exercise all the powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance, 1944."
>
> "It appears from a reading of this clause, that during investigation stage the applications for attachment have to be filed before the concerned District Judge only; but not before the Special Judge. This clause therefore requires to be amended."

But, that is a matter of Legislature and not by Judiciary. On the basis of a plain reading of the words used in the Statute, we hold that only District Judge is invested with the power of attachment under the Ordinance and Special Judge will get that power under section 5 (6) of the P.C. Act only while trying the offence. Hence, question No.(i) is also answered in the affirmative and against the appellant and petitioner.

22. With regard to question No. (ii) whether application filed by the investigating officer before the District Judge was proper. As per section 3 (1) of the Criminal Law (Amendment) Ordinance, 1944, the State Government or, as the case may be, the Central Government can authorise making of an application to the District Judge for the attachment of money or other properties under the said Ordinance. By G.O. (Rt.) No.178/06/Vig. dated 25.8.2006, Government authorised the investigating officer to file the application accompanied by the affidavit stating the grounds for attachment as provided in section 3 of the Ordinance. Annexure I of the application was the above Government Order. Section 5 (3) of the P.C. Act provides that the Court of Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be

the Public Prosecutor as well. Hence, in the legal capacity of a Public Prosecutor, the Legal Advisor, Advocate R.S. Jothy, Vigilance and Anti Corruption Bureau, who is legally empowered to prosecute the cases under the P.C. Act had presented the application before the District Court, Thiruvananthapuram signed by an authorised officer. Operative part of the Government Order, Annexure I is as follows:

> "In the circumstances Government are pleaded to authorise Sri. V.K.Girijanadhan Nair, Deputy Superintendent of Police, Vigilance and Anti-corruption Bureau, Special Cell, Thiruvananthapuram who is investigating the case in VC 1/06/SCT to file a report and affidavit before the District Court, Thiruvananthapuram under the Criminal Law Amendment Ordinance 1944 for the attachment of the landed properties found in the possession of Dr. V.K.Rajan, former Director of Health Services and his family members which are found disproportionate to his known sources of income, till the disposal of the case."

There is no violation of section 24 of Cr. P.C. here. Hence, question No.(ii) of the reference is also answered affirmatively against the appellant and in favour of the prosecution.

23. Now, we will come to the merits of each case. As far as Crl. Appeal No.1400 of 2007 is concerned, allegations raised in the original petition were that during the course of investigation, it was revealed that

appellant had, on getting information about the enquiry by the Vigilance, started disposing his assets. For example, (1) during 3/2005 the accused officer disposed off 13 cents of land with a house building for Rs.70 lakhs; (2) vehicle No.KL 01/Q 7653 an Indica Car which was in the name of Dr.Sumathy Rajan, W/o. accused was transferred to Smt. K.K. Jayasree, the sister of the said Sumathy Rajan, during November, 2005; (3) during 2005, the accused transferred one of his safe deposit locker No.216 to Smt. K.K. Komalam, sister of Smt. K.K. Sumathy, w/o. Dr. V.K. Rajan, the accused; (4) during 2005, he had withdrawn two of his FD's from the Federal Bank, Banerji Road, Ernakulam. The details of FD's withdrawn FD No.24218 and 24219 of Federal Bank, Banerji Road, Ernakulam were also stated. It was further stated that in order to evade the proceedings, appellant may dispose of his assets acquired improperly and hence the properties possessed by the appellant and property transferred to his family members were required to be attached. Along with the application, respondent had filed a schedule of the property which included about 11 different properties. An ad interim order of attachment was passed under section 4 of the Ordinance. In the objections, apart from preliminary objections which we have now overruled, it was contended that some of the properties

were purchased before the check in period. Value of the property mentioned in item No.5 in the schedule alone is more than 72 lakhs. Appellant's wife was also employed and her income was not included. Cash received like rental income, income obtained by sale of property etc. were not considered etc. When District Judge passed ad interim attachment order, issued notice as provided under section 4 (3). There is a difference between the scheme of attachment proceeding under the ordinance and one under Order 38 Rule 5 of the Civil Procedure Code. Here, the ordinance contemplates making of an ad interim attachment and then a notice to show causes why it should not be made absolute while under the code the notice is issued to show cause why an attachment should not be made and in issuing such a notice the court may or may not grant an ad interim attachment. Any person who has an interest in the property can approach the court under section 4 (4) of the Ordinance for lifting the attachment. If appellant's wife has got an objection that she purchased some property with her own income, it is for her to file objection and prove the allegations. In Sonamati Devi v. The State (1958 Crl. L.J.1217), it was held as follows:

> "The entire scheme of the Ordinance shows that evidence has to be adduced by the claimant in support of his case that he has

> interest in the property attached and when that evidence has been adduced, it is for the court to consider whether that evidence was sufficient to establish his claim independent of the question whether any evidence in rebuttal had been adduced by the State. If that evidence by itself is not sufficient to establish the claim laid by the claimant, the claim must fail, notwithstanding the fact that no evidence to the contrary had been led on behalf of the State."

Though the first part of section 3 refers to money or property procured by means of the alleged offence the second part refers to any other property of the accused. Therefore, where an application for the attachment of the house of the accused is filed for realisation of the amount defalcated by the accused the point for consideration is not whether charge has been established on behalf of the State or whether the house was built out of the amount defalcated but the real question for determination by the District Judge is whether it is the property of the accused (See: Smt. Suraj Kumari v. The State of Bihar - AIR 1969 Patna 30 & 1969 Crl.L.J.230 and N.K.Banerji v. State of Bihar - 1969 Crl.L.J. 1179 - Patna) or it is purchased by the money alleged to be misappropriated money in the name of a close relative, or any other property of the accused so as to protect the interest of the Government. If the petitioner's wife or wife's sister or any others has got a

case that the property purchased in their name was purchased by independent source, it is for them to file objection to ad interim attachment. The District Judge, after hearing the objections filed before him, consider the objections, hear the parties and confirm, modify or lift the ad interim attachment.

24. Section 5 (3) of the Ordinance reads as follows:

> "5. Investigation of objections to attachment:- xx xx xx
>
> (3) After investigation under sub-section (2) the District Judge shall pass an order either making the ad-interim order or attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:
>
> Provided that the District Judge shall not,
>
> (a) release from attachment any interest which he is satisfied that the person believed to have committed a scheduled offence has in the property, unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence, or
>
> (b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the said offence procured any money or other property."

It is true that those provisions are made almost one sided in order to protect the interest of the Government, pending adjudication of the case under the P.C. Act. Whether item No.5 will get a higher value and if higher value is fixed, whether the accused will have to explain that source also etc. are matters now under investigation. Merits of the case has to be decided by the Special Judge. Valuation etc. can be considered by the District Judge only after disposal of the case by the Special Court as provided under sections 12 or 13. We are of the view that appellant failed to bring sufficient material to lift the attachment. In this connection, we also refer to section 5 (3) of of the Act. But, we are of the view that notwithstanding the order of attachment, he can file an application for lifting the attachment after producing sufficient security to the satisfaction of the District Court as provided under section 8 of the Ordinance. Without prejudice to the above right of the appellant, the criminal appeal is dismissed.

25. In Crl. M.C. No.2526 of 2007 petitioner challenged the order of the District Judge in Crl.M.P.No.2284 of 2007 regarding the maintainability of the application filed under section 3 of the Ordinance. He filed the application before the Sessions Court. By

impugned order Annexure A2 what is decided is only to number the application as a Miscellaneous Original Petition before the District Court as petitions under section 3 has to be filed following the Code of Civil Procedure. It was observed as follows:

> "However, I may point out that the jurisdiction of the District Court is what is invoked by filing a petition under section 3 of the Ordinance. So much so, the petition filed before this Court should have been numbered as a civil original petition, rather than a Criminal Miscellaneous Petition. It follows that the petition pending before this court as Crl.M.P.No.2284/2007 is to be re-numbered as a Miscellaneous Original Petition and it has to be assigned a number in the serial order of original petitions before the District Court as on today."

Therefore, the Crl. M.P. ought to have been filed before the District Judge as Miscellaneous Original Petition and not before the Sessions Court as a Criminal Miscellaneous Petition. Here, ad interim order of attachment was passed by the Vacation Judge who was sitting in vacation as District and Sessions Judge. Since the maintainability of the application for attachment was also argued, Court also found that the District Judge has power to issue attachment order under the Ordinance. Preliminary objections were correctly overruled. It is for the petitioner to file all objections before the District Court against the ad interim order of attachment. Order under section 5 shall be passed

by the District Judge and not by the Sessions Judge. Director General of Public Prosecutions submitted that first petitioner and wife tried to get passport from nearby State in fictitious names. His wife adopted a fictitious name and applied for passport. Therefore, it was argued that it is in the interest of the State to protect the Government money by attaching the property. We are not considering merits of that matter. We hold that Court by impugned order rightly rejected the preliminary objections. We leave the matter for decision to the District Court regarding the question whether ad interim attachment shall be made absolute or not. Hence, Crl.M.C.No.2526 of 2007 is dismissed.

26. In Crl.M.C.No.2559 of 2007, petitioner challenges the dismissal of his petition to furnish copy of document seized during investigation. We also note that case against the petitioner is under investigation stage only. As provided under section 4 and 5 petitioner was given notice of ad interim attachment and affidavit filed in the court was also supplied. Prosecution is not bound to supply copies of the documents seized during investigation at this stage. District Judge is not adjudicating the merits of the criminal case. Therefore, documents need be given to the accused as provided under

section 207 or 208 of Cr. P.C. at the time of taking cognizance of the case. In K. Satwant Singh v. Provincial Govt. of Punjab (AIR 1946 Lah. 406):

> "The District Judge is not required by section 4 (1) of the Ordinance to give any grounds or reasons if he decides to issue the ad interim attachment order but is only bound to do so if he finds that there are no prima facie grounds for believing that person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property."

We fully endorse the above view. In the above circumstances, we see no merit in the Crl. M.C. and Crl.M.C.No.2559 of 2007 is also dismissed.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa